

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

CA No.70 of 2017
In
CP(IB) No.01/HDB/2017

Date of order: 15.05.2017

Between

Edelweiss Asset Reconstruction Company Limited
Edelweiss House, Off CST Road,
Kalina, Mumbai 400 098

.....Applicant / Financial Creditor

And

1. Mrs. Mamta Binani
Synergies-Dooray Automative Limited
Room No. 6, 4th Floor, Commerce House,
2A, Ganesh Chandra Avenue, Kolkata 700 013
West Bengal

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

2. Alchemist Asset Reconstruction Company,
D-54, First floor, Defence Colony,
New Delhi – 110024

3. Synergies Castings Limited,
Flat no. 4A, Sampathji Apartments,
6-3-855/10/A, Saadat Manzil,
Ameerpet, Hyderabad – 500016

4. Millenium Finance Limited,
402, 4th Floor, MGR Estates,
Punjagutta, Hyderabad - 500082

.....Respondents

(Respondents 2 to 4 have been subsequently impleaded)



**Counsel for the Applicant/
Financial Creditor**

: Ms.Jyothi A.Singh

Counsel for the Respondent No. 3:

Sh. S.Chidambaram, PCS
Sh. G.Bhupesh, Advocate

Counsel for Respondent No. 1 (IRP):

: Shri Nitish Bandary, Advocate
Shri N. Jeevan, Advocate

Counsel for Respondent No.4 : Shri Deepak Bhattacharjee,
Senior Advocate and Ms.
Vinita Thakur

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judl)

Hon'ble Mr. Ravikumar Duraisamy, Member (Tech)

ORDER

(As per Rajeswara Rao Vittanala, Member (Judicial))

1. The present application has been filed by Edelweiss Asset Reconstruction Company Limited (one of Financial Creditors) , under Section 60 (5) (c) of Insolvency and Bankruptcy Code, 2016 (IBC) R/w rules 14 & 34 of National Company Law Tribunal Rules, 2016 (NCLT Rules,16) pursuant to orders dated 26.04.2016 passed in CP (IB) No. 01/HDB/2017, by interalia seeking directions to the Respondent to produce all files, papers and documents available with the Respondent in the CIRP of the Corporate Debtor, including but not limited to (i) proof of claims submitted by each creditor of the corporate debtor and all annexures thereto including statements of account and loan documents; and (ii) reports of registered valuers for the purpose of determining liquidation value of the corporate debtor before this Tribunal; and grant inspection and photo-copies of the documents referred to in (a) above to the Applicant or in the alternative, direct the Respondent to grant inspection and photo-copies of the documents referred to in (a) above to the Applicant etc.
2. Brief facts leading to the filing of present application are as follows:

- a) The Applicant is an asset reconstruction company incorporated and constituted under the Companies Act, 1956 and having its registered office at Edelweiss House, Off CST Road, Kalina, Mumbai, Maharashtra 400 098. The Applicant is by voting share



one of the largest secured financial creditors of. Synergies-Dooray Automotive Limited (**Corporate Debtor**). The Applicant acquired the debts of the Corporate Debtor vide an Assignment Agreement dated January 6, 2014 executed with Exim Bank ,which was one of the original lenders of the Corporate Debtor. The total amount claimed by the Applicant against the Corporate Debtor as on February 20, 2017 as per the revised proof of claims submitted by the Applicant on February 20, 2017 to the Respondent/ the Interim Resolution Professional (**IRP**) is Rs. Rs.88,20,28,260.97 (Rupees Eighty Eight Crores Twenty Lakhs Twenty Eight Thousand Two Hundred and Sixteen and Ninety Seven Paise Only).

- b) The Respondent No. 1 is an Insolvency Professional enrolled under Section 206 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) and is registered as an insolvency resolution professional with the ICSI Insolvency Professionals Agency (**IPA**) which is in turn registered with the Insolvency and Bankruptcy Board of India (**Board**) under Section 207 of IBC. The Respondent No. 1 was proposed for her appointment as the Interim Resolution Professional (**IRP**) by the Corporate Debtor – Synergies Dooray Automotive Limited (**Corporate Debtor**) in respect of its corporate insolvency resolution process as per resolution dated December 9, 2016 passed by the Board of Directors of the Corporate Debtor. The Respondent No.1 was appointed as the IRP by this Tribunal by its order dated January 23, 2017, with a direction to take all necessary actions in accordance with relevant provisions of the IBC.



- c) The Applicant is filing the present Application seeking further information from the Respondent in relation to the Initial Information Memorandum (**Initial IM**) prepared by the IRP pursuant to Regulation 36 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate persons) Regulations, 2016 (**CIRP Regulations**) by way of

production/ inspection of relevant documents in the possession of the Respondent.

- d) The Applicant states that by way of order dated February 22, 2017 (**said Order**) passed by this Hon'ble Tribunal in C.A. No. 43 of 2017 in CP (IB) No. 01/HDB/2017 filed by the Applicant *inter alia* challenging the constitution of the Committee of Creditors of the Corporate Debtor (**CoC**), this Hon'ble Tribunal permitted the Respondent to hold the first meeting of the CoC on February 22, 2017 (**First Meeting**). However, this Hon'ble Tribunal categorically clarified in the said Order that all decisions taken in the First Meeting would be subject to further orders of this Hon'ble Tribunal.
- e) On February 22, 2017, the First Meeting was held and various issues as set out in the notice and agenda for the First Meeting were voted upon by the CoC. The Applicant states it did not admit or accept the appointment of the Respondent as the Resolution Professional (**RP**) in respect of the CIRP of the Corporate Debtor as was also clarified by the Applicant in the First Meeting, and that all decisions taken in the First Meeting, including the appointment of the Respondent as the RP of the Corporate Debtor are subject to further orders of this Hon'ble Tribunal as per its order dated February 22, 2017 passed in the present Company Application. However, contrary to orders of Tribunal, the Respondent No 1 held the First Meeting and continues to conduct the CIRP of the Corporate Debtor as if the present proceedings have been finally disposed of.
- f) During the First Meeting, the Applicant noted that the papers and documents filed with the Respondent under the CIRP by the creditors of the Corporate Debtor were all kept on the table. The Respondent during the First Meeting mentioned that all the files, papers and documents with respect to every proceeding in the matter are open for inspection. Item No. 10 (Vote of Thanks) as recorded in the Minutes for the First Meeting is relevant for the



purpose of this Application and is reproduced below for ready reference:

"ITEM NO. 10: VOTE OF THANKS

There being no other business to be transacted, the meeting ended with a request once again from the Chairperson to inspect all the relevant papers, records and documents including the list of creditors, register of claims etc., kept for inspection for all the participants, during the meeting. The members of the Committee of Creditors made inspection except EDELWEISS ARC. The Chairperson was asked about the next steps in the process which she updated and also mentioned the provision which enables the creditors to call a meeting, if they so desire. She thanked all the participants."

(Emphasis supplied)



- g) The Applicant states that as evident from the above extracted portion of the Minutes, all members of the CoC duly inspected all files, papers and documents with respect to every proceeding in the CIRP during the First Meeting, except for the Applicant, which reserved its right to seek inspection later. The said fact is evident from the email dated February 27, 2017 of the Applicant whereby it gave its comments to the Minutes. Accordingly, the Applicant addressed an e-mail on March 16, 2017 to the Respondent requesting her to provide the Applicant inspection of all files, papers and documents available with the Respondent in the present matter, including but not limited to (i) proof of claims submitted by each creditor of the corporate debtor and all annexures thereto including statements of account and loan documents; and (ii) reports of registered valuers for the purpose of determining liquidation value of the corporate debtor. The Applicant sought the inspection of documents on any of the days between March 21, 2017 and March 23, 2017.

- h) The Respondent responded by an e-mail of March 17, 2017 by which she requested the Applicant to provide the relevant provisions of the IBC or any regulations made thereunder which "mandates" her to provide inspection of documents to the Applicant.
- i) The Applicant once again addressed an e-mail on March 24, 2017 responding to the Respondent's e-mail of March 16, 2017 wherein the Applicant expressed its surprise as to how and why the Respondent is now asking for provisions of the IBC which "mandate" her to provide inspection of documents on the one hand while on the other hand the Respondent has given complete inspection of all documents to the other members of the CoC of the Corporate Debtor during the First Meeting as is also recorded in the Minutes of the First Meeting. The Applicant drew the Respondent that as one of the financial creditors of the Corporate Debtor, the Applicant is entitled to seek information pertaining to the Initial IM, including but not limited to details relating to the list of creditors, the amounts claimed by each creditor, the amounts admitted in respect of the claim of each creditor and the debts due from the corporate debtor to a related party and any additional information as deem fit by the Applicant, and further that as per the provisions of the IBC read with the CIRP Regulations, the Respondent is duty-bound to provide us such information which the Applicant sought by way of inspection of documents. The Applicant once again requested the Respondent to grant it the further information through inspection of documents sought for in its e-mail of March 16, 2017. The Applicant sought the inspection of documents on March 28, 2017 or March 29, 2017.
- j) On March 27, 2017, the Applicant received an e-mail from the Respondent wherein the Respondent stated that the papers are open for inspection, and asked the Applicant to inspect the documents on the following day, i.e. March 28, 2017. However, the Respondent stated that only the list of creditors is open for



inspection and that this would be "placed on the table" along with all calculations and papers relating to the Applicant's own claim but failed to a mention of the venue of said inspection. However, it is stated that she would not be sharing claim document of other creditors of the Corporate Debtor.

k) On March 28, 2017 (at 12:21 a.m.) , the Applicant received an e-mail from the Respondent whereby the Respondent referred to Section 21 (9) of the IBC, Section 29 (2) of the IBC, Regulation 13 of the CIRP and Regulation 36 (3) of the CIRP Regulations and reiterated that the list of creditors was available for inspection. The Respondent also stated (contrary to what is recorded in the Minutes of the First Meeting) that only each creditor's respective files were kept open during the First Meeting for inspection. The Respondent has also sought whether the information requested for by the Applicant is under Section 29 (2) of the IBC or under Regulation 36 (3) of the CIRP Regulations (which, in the Respondent's view speaks of information and not inspection). In her said email of March 28, 2017, the Respondent further stated that the inspection is available at Delhi even tomorrow i.e March 29, 2017. In fact, all meetings and proceedings in relation to the Corporate Debtor (under CIRP) should be held at its registered office at Hyderabad.as per oral directions of Tribunal.

l) It is contended that further information being sought for by the Applicant from the Respondent by way of inspection of documents is a right conferred upon the Applicant under Regulation 36 (3) of the CIRP as a financial creditor and member of the CoC of the Corporate Debtor. The interpretation of the Respondent of Regulation 36 (3) of the CIRP Regulations, viz. that the said regulation speaks of further information and not inspection is myopic and for that reason incorrect.

m) The Applicant further submits without prejudice and *in arguendo* that even assuming that the further information being sought for



by the Applicant under Section 36 (3) of the CIRP must have a bearing on the resolution plan, unless the Respondent is of the reasoned view that the information requested for by the Applicant by way of inspection of documents does not have a bearing on the resolution plan, the Respondent cannot deny this further information to the Applicant by way of inspection of documents to the Applicant. The Applicant also states that there is no question of this inspection being provided only to the Applicant, and it is the Applicant's case that complete inspection of all files, papers and documents available with the Respondent under the CIRP has already been availed by the other members of the CoC during the First Meeting. In any case, the Applicant is in agreement with the Respondent that the further information by way inspection of documents must be provided to all members of the CoC.

n) With respect to any undertaking that is to be provided by the Applicant in respect of the information being sought for from the Respondent, the Applicant states the undertaking referred to in Section 29 (2) of the IBC is in respect of relevant information that a resolution applicant may seek from the IRP in relation to preparing the information memorandum and not in respect of any further information that is sought by the Applicant as in this case. In any event, the Applicant states that it has duly provided an undertaking to the Respondent at the time of her preparing the Initial IM as can be seen from the Applicant's email of February 15, 2017.

o) Therefore, the applicant urged the Tribunal to allow the prayer as sought for in the application failing which the applicant would suffer grave prejudice, irreparable injury and loss and asserted that balance of convenience is in its favour.

3. The application is strongly opposed by the respondents by filing separate replies. The contentions raised by the Respondents are briefly mentioned hereunder.



4. The first respondent (Mrs. Mamatha Binani) has filed a reply dated 24th April, 2017, through her counsel Mr. P.Vikram, by, inter alia contending as follows:

(a) The allegations and contentions made in the application are denied and asserted that she has done strictly in accordance with the code and conducting herself in terms of the provisions of the Code and thus contended that the instant application is legally untenable under IBC.

(b) As per the regulation 13(1), the Interim Resolution Professional has to verify every claim and there upon maintain a list of creditors containing the names of the creditors along with amounts lent by them, the amount of the claim admitted and the security interest if any in respect of such claims and proof of it. As per regulation 13(2), the above list is available for inspection by any person, who submits proof of his/her claims.

(c) It is stated that in the meeting of the first Committee of the creditors, the papers of other creditors were not kept available for inspection by other creditors. It is only respective files along with other supported claim documents of working sheets towards submitted claims vis-à-vis, where submitted claims are made available.

(d) It is contended that as per Regulation (3), sharing of information is available, provided the same has a bearing on the Resolution Professional. Further the applicant failed to show how the information sought by them has bearing on the Resolution Process.

(e) It is also stated that other members of the creditors have opposed the disclosure of any information concerning them and contended that the information is pervert in nature and fall within the ambit of confidential information, which cannot be shared by the Respondent No.1 with anybody.



- (f) It is further contended that the present application can be decided only after impleading necessary parties.
- (g) It is further asserted that she has treated all members of the Committee of Creditors equally and no documents pertaining to the claim of other creditors have been shared with other creditors. So the contention of the applicant that the other creditors were given access to the documents of others is not at all correct.
- (h) The applicant is an assignee of EXIM Bank, and it is also aware about the existence of lender of corporate debtor.
- (i) It is stated that in terms of Regulations 36(3) of CIRP, further information can be sought by the members of the Committee if such information has a bearing on the Resolution Plan. Since CIRP of corporate debtor has not still reached the stage of submission and evaluation of Resolution Plan, the time is misconceived and premature. However, it is stated that she would abide by decision of this Tribunal.

5) Alchemist Asset Reconstruction Company (Respondent No.2) herein has filed a reply dated 12/05/2017, by inter-alia, contending as follows:-

- (a) Firstly, there is no provision under IBC permitting the production and inspection of documents by the other creditors with Resolution Professional for the purpose of adjudicating of other claims.
- (b) AARC is one of the financial creditors of corporate M/s Synergies Dooray Locomotive Ltd. and is a member of the Committee of creditors formed by the Resolution Professional.
- (c) It is contended that Edelweiss ARC had unilaterally initiated action under the provisions of the SARFAESI Act without the consent of AARC against the assets of SDAL. Since, no consent was taken from AARC; it was constrained to approach the Hon'ble DRT at Visakhapatnam seeking stay of SARFAESI proceedings. The Hon'ble DRT on being



convinced that no consent was taken from AARC restrained Edelweiss ARC from unilaterally under the SARFAESI Act. It is submitted that all relevant documents demonstrating that AARC is a Secured Creditor had been annexed before the Hon'ble DRT, which is in the knowledge of Edelweiss ARC.

(d) It is further contended, in this regard, Section 21 (9) and 21 (10) of the Code pertain to the Resolution Professional being bound to furnish any financial information pertaining to the Corporate Debtor if the same is sought by the Committee of Creditors. Section 21 (8) states that any decision by the Committee of Creditors shall be taken by a vote not less than 75% of the voting share of the Financial Creditors. Admittedly, Edelweiss ARC does not have the consent of 75% of the Financial Creditors which is mandatorily required to seek information U/s. 21 (9) and 21 (10) from the Resolution Professional.

(e) It is therefore, prayed the Tribunal to reject the application as devoid of any merit.

(6) Synergy Casting Limited (Respondent No.3) has filed a reply dated 12/05/2017, through their counsel, by inter-alia, contending as follows:-

(a) It is stated that the documents submitted by SCL are legally not mandated to be provided to EARC. The creditors do not have any right to access documents submitted by other creditors and those documents are privileged and confidential. They have already raised objection about revealing the documents filed by then with Resolution Professional.

(b) Millennium Finance Limited is a member of committee of Creditors constituted under the provisions of IBC with the Corporate Debtors committee of 439 Crores, making it the single larger financial creditor in the committee of creditors constituted by Resolution Professional.



- (c) EARC is a financial Company, who has filed various applications before the Hon'ble Tribunal, and the present application is filled with sole intension of stealing the other MFL and obtaining orders behind its back.
- (d) It is contented that MFL is a non-banking financial Company and its interest and rights shall be adversely impacted on account of investigation through QUA which has documents pertaining to Corporate Debtors. The documents asked by the applicant are private agreements and those cannot be shared with others and it do not have bearing on other Committee of Creditors including the applicant herein and those documents cannot be permitted for inspection by others. It is contended that EARL is least interested in evolution of the proof as it is only frivolous claim despite being minority creditor, EARC is not a major financial Creditor as contended.
- (e) It is further contented that it can grant permission of inspection only of their own documents and not the documents pertaining to other creditors, vis-a-vis., first meeting of Committee of Creditors.



7. In the light of above contentions of the parties, the points for consideration by the Tribunal are twofold:
 - a. What is information memorandum mentioned under various sub-provisions of rule 36 of IBBI(CIRP) Regulations, 2016;
 - b. Whether request of the applicant falls under the said provisions;
8. For convenience, entire rule 36 of **IBBI (CIRP) Regulations, 2016** is extracted below:
 - (1) Subject to sub-regulation (4), the interim resolution professional or the resolution professional, as the case may be, shall submit an information memorandum in electronic form to each member

of the committee and any potential resolution applicant containing:-

- (a) at least the matters listed in paragraphs (a) to (i) of sub-regulation (2) before its first meeting; and
- (b) matters listed in paragraphs (j) to (l) of sub-regulation (2), within fourteen days of the first meeting.

(2) The information memorandum shall contain the following details of the corporate debtor –

- (a) assets and liabilities, as on the insolvency commencement date, classified into appropriate categories for easy identification, with estimated values assigned to each category.
- (b) the latest annual financial statements;
- (c) Audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application.
- (d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;
- (e) particulars of a debt due from or to the corporate debtor with respect to related parties;

- (f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;
- (g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake.
- (h) details of all material litigation and an ongoing investigation or proceedings initiated by Government and statutory authorities;
- (i) the number of workers and employees and liabilities of the corporate debtor towards them;
- (j) the liquidation value;
- (k) the liquidation value due to operational creditors; and
- (l) other information, which the resolution professional deems relevant to the committee

- (3) A member of the committee may request the resolution professional for further information of the nature described in this regulation and the resolution professional shall provide such information to all members within reasonable time if such information has a bearing on the resolution plan.
- (4) The interim resolution professional or the resolution professional, as the case may be, shall share the information memorandum after receiving an undertaking from a member of the committee or a potential resolution applicant to the effect that such member



or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under section 29(2).

9. We have heard Ms. Jyothi Singh, Learned Counsel for the Applicant/Financial Creditor; Shri S.Chidambaram, PCS, Shri G. Bhupesh, Shri Nitish Bandary, Shri N Jeevan, Learned Counsels for the Respondents and have carefully perused all materials on record with relevant Rules.
10. The above provisions clearly say that Interim resolution professional/Resolution professional shall submit an information memorandum in electronic form to each member of Committee and any potential resolution applicant as per details given therein. A member of Committee can also request IRP/RP for further information of nature as described above and Resolution professional shall provide such information to all members within reasonable time if such information has a bearing on resolution plan, however, subject to taking suitable undertaking from concerned party.
11. As stated supra, the applicant has not availed opportunity under said rule along with others. However, it is demanding to make it available further information as it required for the purpose of resolution plan. The learned IRP vide its letter dated 14th February, 2017 has rightly asked the applicant herein to give an undertaking from the organisation to the effect that confidentiality has to be maintained and it should not be misused etc. Accordingly, the Applicant has given suitable undertaking as required.
12. It is not the case of respondents that documents filed with IRP are privileged one and can never be shared with others, and, in any case, they are relevant for the purpose of resolution plan. Of course, the Respondents can seek protection under the said rule by way of undertaking from the concerned parties. As stated supra, the applicant has furnished suitable undertaking and the information sought are within



scope of resolution plan and sharing such information with the applicant would not prejudice the interest of respondents. Moreover, the applicant is also accepting that every committee of Creditors are equally entitled for the same. In order to have transparency in the matter, it would be desirable to share all information available with Interim Resolution professional with members of committee of Creditors. And nobody can claim any privilege in sharing information and all stand on equal footing in the case of sharing information. So the request of applicant falls under the said rule and it is justified in asking the information as available with Interim Resolution professional.

13. In the result, the Company application bearing CA No.; 70 of 2017 in CP (IB) No. 01/HDB/2017 is disposed of with the following directions:
 - a) Mrs. Mamta Binani, Respondent No. 1 is directed to share information Memorandum as per Regulations 36 of IBBI(CIRP) Regulations, 2016 with the Applicant, as communicated to the Applicant vide her letter dated 14th February, 2017 at the earliest possible time, at Registered office of Company at Hyderabad;
 - b) The Respondent No. 1 is at liberty to take all suitable precautions/safeguards in the light of apprehensions expressed by the other Respondents herein.
 - c) All members of Committee of Creditors in question are equally entitled for the same benefit as that of Applicant herein.



Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECH)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDL)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

G. Anantha Lakshmi
(CH. ANANTHA LAKSHMI)
FOR Asst. DIRECTOR
NCLT, HYDERABAD - 68
19/6/17
STA